

Special Courts in Uganda: Enabling access to justice for survivors of gender-based violence

National Case Census

From the census report the committee established that the highest number of backlogged cases were:



Criminal cases
32.6%



Civil cases
29.3%



Land cases
25.2%



Family cases
6.9%



Commercial cases
3.7%



Anti-corruption cases and war crimes constituted the least backlog.

2.3%



Executive Summary

The growing number of specialized courts and judicial initiatives in Uganda and the varied approaches they take indicate that the judiciary, government, communities and service providers are searching for effective solutions to challenges in the justice system. Currently, there is no province wide approach to specialized courts that engages the government and the judiciary jointly.

These courts tend to be established in response to a unique community, justice or resource challenge without a region wide planned, coordinated allocation of limited resources to advance effective justice solutions throughout Uganda. This policy brief on specialized sessions establishes a structured approach for current and future specialized courts that is rooted in validated practice, research and other approaches which engage the judiciary, justice system partners and other interested parties.

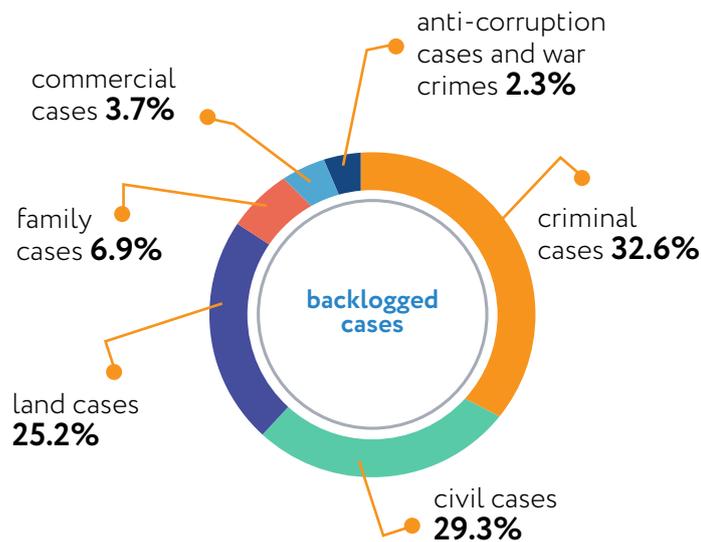
This policy brief documents the outcomes of specialized sessions for gender based violence and sets out the background and context for the Specialized Courts Strategy. It defines what specialized courts are, for the purpose of understanding the background, provides an overview of specialized criminal court sessions and judicial initiatives in Uganda and outlines the benefits of such sessions.

Special edition in partnership with:

Justification

For a long time, case backlog has stood out as the elephant in the judiciary. It was against this background that the Justice Law and Order Sector (JLOS) came up with the case backlog reduction strategy to change the way case backlog had always been handled to one where resources human and financial would be focused on the result rather than processes. The Judiciary together with other JLOS institutions aware of the challenge of case backlog have implemented a number of interventions.

The Judiciary in December 2015 established a case back log committee that undertook a national case census with the objective of establishing the pattern of pending cases according to level of court, circuit, division and region.



From the census report the committee established that the highest number of backlogged cases were criminal at 32.6% followed by civil cases at 29.3, land cases at 25.2% family cases at 6.9%, commercial cases at 3.7% while anti-corruption cases and war crimes constituted the least backlog.

In the wake of this and many other institutional and systemic challenges faced by the judiciary, there is now a growing need for tailor made solutions to address these gaps in order to enable access to justice. As such, FIDA-Uganda and ActionAid International Uganda as stakeholders in the national GBV taskforce in Uganda with funding from Norway through UNFPA under the United Nations Joint Programme have implemented the first phase of the GBV special courts in Uganda.

The programme targeted three regions of

Acholi, Teso/Lango and Karamoja in the specific districts of, **Amuria, Amuru, Dokolo, Gulu, Kaabong, Katakwi, Kitgum, Kotido, Lira, Moroto, and Pader**. The major aim was to demonstrate, document and advocate for the establishment of GBV Special Courts as one of the interventions to address case backlog and delayed justice to GBV survivors.

Backlog by Court Level

COURT LEVEL	Over 10 years	5-10 years	2-5 years	1-2 years
Supreme		8	5	21
Court of Appeal	451	1,094 (16%)	1,656	1,516
High Court	254	1,557 (24%)	8,821	9,206
Chief Magistrates	217	3,086 (47%)	8,169	7,617
Magistrate Grade 1	33	650	2,064	2,438
Magistrate Grade II	13	75	711	1,207
Grand Total	968	6,470	21,426	22,005
	0.84%	5.64%	18.66%	19.17%

This policy brief on the special sessions is a documentation of best practices and evidence-based approaches that have been demonstrated to be effective in existing specialized courts can be appropriately adopted, and will work to ensure the process is managed appropriately in an accountable and transparent manner.

What do we mean by a Specialized Gender-Based Violence Court Sessions?

These are special judicial initiatives that address the scheduling of gender based violence cases that have been considered in the review. In recent years, specialized court processes have been gaining recognition and support in Uganda and around the world to seek better solutions to manage criminal offenders. These courts offer alternatives to the traditional court process. Broadly defined, specialized courts offer more tailored approaches in response to specific challenges.

In the absence of specialized courts in Uganda, the partners (FIDA, ActionAid with support from UNFPA) simplified the process by facilitating special court sessions for gender based violence cases. The sessions focused solely on Restorative justice which in this case refers to a non-adversarial and non-retributive approach to justice that focuses on healing, holding the offender accountable, and the involvement of the community to achieve better justice outcomes. In this way, we sought to improve outcomes, reduce recidivism, enhance public safety, and ultimately increase public confidence in the justice system

Approach

Gender based violence accounts for at least 50% of the cases within the criminal justice system, this only means that gender based violence cases contribute significantly to the case backlog in the justice system. In testing the concept of special courts, the partners designed the special sessions to specifically respond to gender based violence cases in the justice system while contributing to reduction in the case backlog.

Experiences of complainants/survivors with court personnel in regular courts suggests that such personnel frequently do not have

JLOS SDP IV

The Judiciary SIPIII has a Key Result Area for enhancement of access to justice. One of the key actions identified to achieve this objective is to create specialised divisions and courts for the purpose of improving efficiency and effectiveness of delivery of judicial services. The SIP generally talks about access to justice for the vulnerable with emphasis on affirmative action



the necessary gender-sensitivity or comprehensive understanding of the various laws that apply to violence against women cases; may not be sensitive to women's human rights; and may be overburdened with other cases, resulting in delays and increased costs to the complainant/survivor.

In planning for the first ever special sessions for gender based violence, the partners employed a couple of approaches with the overall goal of facilitating a coordinated network of partner agencies with strong communication links to promote offender accountability, victim safety, and case processing consistency, while delivering justice within a speedy time frame.

Police Statistics March 2017 Reported Cases

Crime Category	2016	2015	2014	2013	2012	2011	2010
Death (Dom/Violence)	163	178	144	150	131	108	109
Defilement	17,567	17,812	18,507	19,508	17,216	15,124	14,973
Rape	1,572	1,548	1,419	1,365	1,136	1,197	898
Indecent Assault	548	760	668	769	970	810	910
Incest	72	93	99	79	67	36	56
Domestic Violence	10,744	7,939	7,703	8,363	7,304	5,421	-
H/Trafficking (Women)	375	219	77	60	27	36	-

Approach to Special Sessions for Gender Based Violence

1. Consultative Approach

The partners jointly held regional and national consultation sessions to solicit input on the structure, goals and overall direction of the strategy for implementation of the special sessions. The consultations included staff from line ministries, justice system partners, Aboriginal organizations, community, social and health agencies in Acholi, Lango, Teso and Karamoja regions. The sessions were designed to respond effectively to the needs of targeted communities and were supported by other justice, health and social system partners. Consequently, communities, non-profit organizations and other service delivery agencies had a significant role to play in ensuring the success of the sessions.

A special taskforce was consequently established to implement the recommendations of the stakeholders and ensure success of the special sessions

2. Development of Special Operating Procedures

Recognizing the prevalence of sexual and gender based violence (SGBV) and its devastating impact on women and children in particular, as well as families and communities the partners embarked on the process of developing Standard Operating Procedures (SOPs) to facilitate joint action by all actors to prevent and respond to SGBV. This consensus led to the establishment of a multisectoral working group to enable a collaborative, multi-functional, inter-agency and community based approach.

The GBV SOP seeks to achieve the following:

- Guide the implementation of the special courts for gender based violence Standardize GBV response mechanism
- Establish framework for accountability
- Ensure all GBV actors adhere to best practice and minimum standards that meet international ethical guidelines

- ■ The goal of the SOP's is to establish clear procedures, roles, and responsibilities for each actor involved in the response to gender based violence. The purpose of the SOP is to clarify objectives and standardize operations and establish the framework of accountability.



3. Special Gender Based Violence Sessions

The special sessions were primarily designed to increase efficiency and case management of gender based violence cases that have a high level of trial uncertainty so that resources in other courts can be used for cases with higher trial certainty. An emphasis was made defendant monitoring, and accountability and enhanced protection for, and services to, victims.

The goals of the special sessions were to:

- | | | |
|---|---|--|
| 1 | 2 | 3 |
| ● Improve justice system efficiencies through the adoption of innovative case management practices. | ● Integrate justice, health and social services to hold offenders accountable while producing better outcomes for offenders by responding to their needs and circumstances. | ● Contribute to a livable community and afford new opportunities for community participation in the criminal justice system. |



Methodology

The office of the chief registrar set out the types of cases to be scheduled in the docket courts and provided specific case management and scheduling requirements. Generally, the cases scheduled in docket courts were limited to gender based violence offences.

All gender based violence related offences for adult accused persons, except for murder offences, and criminal offences scheduled for high court hearing applications were scheduled in the magisterial court. For this session unlike the traditional sessions where approximately **40 to 60** files are scheduled for each session, a total of **350** cases were cause listed for hearing.

The program included coordination of all courthouse staff, working with other stakeholders including informal justice actors, linking survivors with appropriate services, using a continuum of treatment and services, timely monitoring of treatment plans, direct judicial interaction, explanation of responsibilities and decisions, full engagement by all involved, focusing on behavioral changes even

beyond case completion, understanding of underlying causes, being able to reach a sizeable population, service providers participating in meetings, consideration of the community, offering practical incentives for the communities

JLOS CASE BACK LOG REDUCTION STRATEGIES TO DATE

- Session system
- Chain linked initiative
- Establishment service points - specialised division of the High Court
- The JLOS case back log reduction strategy
- Mediation
- Plea bargaining
- Small claims procedure
- Introduction of court recording and transcription equipment
- Development of automated case management systems – automated manual processes

Results of the Special Sessions

Collaboration between partners resulted in the added benefit of enhancing court efficiency by managing shared clients in an integrated fashion. Justice, health and social service agencies were able to provide services to shared clients. Collaboration and coordination of services also allowed for a better use of programs, while improving the effectiveness and efficiency of resource use. For example in Moroto, many of the victims were referred to the domestic violence shelter for counseling and additional support.

350 cases concluded in a record period of **3** weeks across **5** sessions

350 cases were successfully concluded in a record period of 3 weeks across 5 sessions in the targeted regions. It should be noted that an ordinary criminal session must have a maximum of 40 cases to be heard. On average these cases would be heard over a period of 6 months under the traditional court process.

Through these sessions, the courts allowed for integration of a variety of legal processes including criminal, civil, and family law issues. Specialized sessions also dealt with cases of sexual violence.

Specialized court sessions provided for a gender-sensitive approach to gender based violence, enabled the judicial officers to experience the unique characteristics of violence against women cases, compelling them to process cases more quickly hence reducing the burden on victims. Moreover, judicial officers who consistently deal with cases of violence against women were able to see repeat offenders and took appropriate action.

One of the greatest achievements of the sessions was attendance of Witnesses which is not the case with traditional courts. Witnesses were present both experts/professionals and non-experts. It should be noted that in the Uganda Judiciary, Witnesses in Chief Magistrates Courts are not facilitated to attend court. Government facilitates only witnesses for High court sessions. Hence the facilitation of witnesses in this GBV session in Chief Magistrate's court motivated many witnesses to come to court.

Correspondingly, the fact that fewer individuals dealt with these cases helped deter future perpetrators because offenders now expect increasing penalties and greater accountability having witnessed the sessions.

Lessons Learned

The problem-solving orientation all stakeholders focused on the underlying issues. This approach centered on rehabilitation to accomplish its task, many perpetrators were remorseful and made commitments not to repeat the offences.

Collaboration - Where both courtroom players and others had to work together to solve the issue at hand. Those involved included court administrators, judges, attorneys, supervision agencies, service providers, and community members. Meaningful consultation with partners and stakeholders was essential in accurately identifying issues and creating avenues to respond to them effectively. Involving a diverse group of stakeholders in the decision-making process not only allowed for the consideration of various options and informed policies and practices, but also increased support for the initiative.

Accountability - This principle required compliance by all involved – defendants, courtroom players, social service agents – by tracking performance and results. It saw responsibility lying with both the court system and the community.

Emphasis on goals - According to some stakeholders, in traditional courts goals were viewed largely in administrative terms with the emphasis being on court volume and case flow. In specialized sessions the goal was related to achieving positive individual and community outcomes. Therefore whereas a traditional court focuses on average time spent from arraignment to disposition the special sessions focused on decreasing criminal activity which lessens the dependence on the criminal justice system.

Why Specialized Courts are a Good Idea

Specialized courts are critical in freeing up the resources for the lower courts where many of the cases would normally be tried. Since many of the lower courts suffer from problems of inadequate financing, inadequate facilities, lax procedures and unbalanced case loads the specialized courts provided a sound alternative.

Through collaborative approaches to decision making, individualized justice for each participant, defendant accountability, community engagement, greater information gathering and dissemination, staff training, and support led to improved safety for the victims and stronger communities.

CREATION OF A SPECIAL COURT

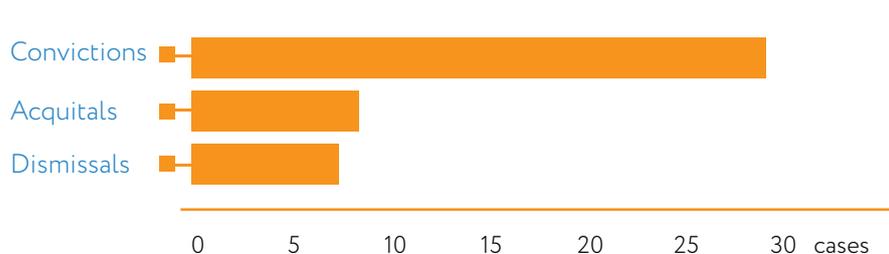
By CJ as a Practice Direction under Art. 133 (1) b of the Constitution - Administrative 133. Administrative functions of the Chief Justice.

(1) The Chief Justice – may issue orders and directions to the courts necessary for the proper and efficient administration of justice.

“From what we know, the criminal courts have been pre-occupied with cases dealing with other crimes and these GBV special sessions have surely brought relief to the lower courts”- Gerald Resident State Attorney Moroto

Advocates on State brief were commendable for their commitment and preparation shown despite on short notice. They as well registered a number of acquittals as well as counseling and advising suspects freely on what options available to them. All these done expeditiously (13 acquittals in total)
Jonathan- RSA Kotido

GBV Cases in Kotido, Kaabong and Abim



In Northern Karamoja, a total of **44** cases were handled during the mini session. Of these the session achieved **29** convictions, **8** acquittals and **7** dismissals. These GBV Cases were from the three districts of Kotido, Kaabong and Abim.

Specialized courts provide a stronger possibility that court personnel will be gender-sensitive, experienced in the unique characteristics of violence against women cases, and may be able to process cases more quickly, reducing the burden on victims. Moreover, judges who consistently deal with cases of violence against women may see repeat offenders and can take appropriate action.

Capital	Males	Females	Total
Aggravated Defilement	4,183	21	4,204
Rape	1,149		1,149
Sub total	5,332	21	5,353
Petty			
Attempted Defilement	35		35
Attempted Rape	151		151
Procurement of defilement	1	1	2
Procuring Rape	2		2
Simple Defilement	772	4	776
sub total	961	5	966
Grand Total	6,293	26	6,319

The total number of remands is **6,319** of these **26** are females while **6,293** are males. The percentage of sexual offenders to the total remand population is **24.1%**

Aggravated defilement (**4,183 (M) + 21 (F)**) and rape account for the biggest percentages of sexual offences. **4,204 and 1,149**

Proposed Special Gender Based Court Model

The special court for gender based model operates at both a systemic level, by seeking to change how community agencies work together, and at an individual case level, through efforts to hold offenders more accountable and provide better protection and services to victims. Several key features distinguish the special gender based violence courts from more generalized dockets and more traditional operating procedures.

One of the key features of this court model is its emphasis on building partnerships of public and private sector community agencies that coordinate their work toward achieving a common set of goals. The aspect of specialized caseload of virtually all indicted gender based violence cases in the jurisdiction, and no other cases than gender based violence. Concentrating all these cases on a single docket has the advantages of efficiently bringing resources together, and making it easier to identify and address gaps in the system of services.

This model would require trained and dedicated personnel from court, prosecution, offender intervention and treatment, probation, and victim service agencies. Most of the personnel involved in these cases specialize in gender based violence cases which leads to improved service provision. The judicial officers take a key leadership role in implementing this model. Vertical processing and standard practices to ensure consistency in case handling. Each case is handled by the same judge, magistrate and prosecutor/advocate team from the point of sanctioning of the file to trial.

Standard practices entailed in the standard operating procedures such as the *voire dire* and other key elements in the gender based violence laws

will be constantly used in handling gender based violence. The lack of implementation of gender based violence laws can currently be attributed to the generalized nature of prosecution of cases in the traditional courts.

Enhanced case information flow among partner agencies to improve judicial decision-making and partner agency operations. Each judicial officer has a resource coordinator, probation, and victim service agencies have court liaisons or dedicated staff to enhance the exchange of information about cases. The court will through this specialized module offer protection to victims through the routine use of orders of protection throughout the adjudication process and usually as a condition of disposition.

These cases are often very volatile and involve serious harm and substantial risk of further injury to the victim. Given the intensity and the breadth of case services that may be needed to deter repeat abuse and help victims recover, it can be much more feasible to marshal resources and bring them to bear on cases in a sufficiently focused way when all such cases are concentrated together in a few specialized dockets. For example, when intensive victim advocacy and counseling services are offered to promote victim safety and recovery from abuse, it is much more efficient if advocates have only a few points of referral for case intakes and points of contact for exchanging information on case events, such as court actions and threats or occurrences of repeat harm.

One way in which domestic violence cases have particularly frustrated police, prosecutors, and judicial officers is when victims do not wish to participate in the system's efforts to protect them through legal intervention (arrest and prosecution of the case). Through specialized trainings, a judge, and any other system actor for that matter, will be made to understand the multitude of reasons a victim may not wish to participate or may even rally in support of her/his abuser (such as economic dependence on the abuser, fear of reprisal, or unhelpful experiences with the justice system in the past).



Recommendations

- a. Need for a holistic comprehensive initiative to address the procedural and operational concerns of GBV within the Criminal Justice System.
- b. Need for a special audit to identify challenges for data driven reforms.
- c. Need to consider issues of victim impact statements, reconciliation and forgiveness as part of developing a victim centered approach to criminal justice.
- d. Community awareness and involvement in the criminal justice process is key to delivering justice.
- e. Plan for post session briefing forums to identify best practices.
- f. Consider Sustainability issues for the project.
- g. Community sensitization/popularization of the criminal sessions necessary for fast tracking cases.
- h. Need to document and share court experiences with judicial officers.
- i. The judiciary should convene and facilitate partner meetings to enhance interagency linkages and identify and resolve emerging problem areas. They play a key role in development and expansion of the court model by networking with potential future partner agencies, developing new or expanded programs which would benefit the court, and developing fund raising efforts to support these activities, and developing training for court and partner agency personnel.

Conclusion

The judiciary should take a key leadership role in implementing this model. The model's success depends on the judiciary being able and willing to expand the traditional judicial role to include development and maintenance of working relationships with other community agencies, through convening regular partner meetings and special troubleshooting meetings as needed. They also must be willing to accept certain modifications of traditional judicial practices and priorities in order to implement a model per se, particularly a model that uses innovative procedures to achieve access to justice.

Examples of Special Courts

Specialized courts exist in a number of countries, including Brazil, Spain, Uruguay, Venezuela, the United Kingdom, and a number of states in the United States. Such courts have been effective in many instances as they provide a stronger possibility that court and judicial officials will be specialized and gender-sensitive regarding violence against women, and often include procedures to expedite cases of violence against women.

The specialized integrated courts established by Title V of the Organic Action Integrated Protection Measures against Gender Violence (2004) in Spain and article 14 of the Maria da Penha Law (2006) in Brazil deal with all legal aspects of cases regarding domestic violence, including divorce and child custody proceedings and criminal proceedings. By streamlining and centralizing court processes, such integrated courts eliminate contradictory orders, improve complainant/survivor safety.



United Nations Population Fund

Plot 12A Baskerville Avenue, Kololo
Kampala, Uganda
Tel: +256-4177-44500
<https://uganda.unfpa.org/>

flickr



<https://www.flickr.com/photos/unfpa/>



twitter.com/UNFPAUganda

YouTube

www.facebook.com/UNFPAUG

<https://www.youtube.com/unfpaug>

#LiveYourDreamUG